

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Misc.

United States Steel Corporation,

Plaintiffs,

vs.

Jon Linc Stine, Minnesota Pollution
Control Agency,

Defendant,

and

Minnesota Center for Environmental
Advocacy, Save Lake Superior
Association, and Save Our Sky Blue
Waters

Defendant-Intervenors.

**ANSWER OF DEFENDANT-
INTERVENORS MINNESOTA
CENTER FOR ENVIRONMENTAL
ADVOCACY, SAVE LAKE
SUPERIOR ASSOCIATION, & SAVE
OUR SKY BLUE WATERS**

Court File No. 62-CV-17-989
Judge William H. Leary, III

For its answer to Plaintiff's complaint, Defendant-Intervenors Minnesota Center for Environmental Advocacy, Save Lake Superior Association, and Save Our Sky Blue Waters (collectively "Defendant-Intervenors") state, allege, and deny as follows:

1. In response to Paragraph 1 of U.S. Steel's (Plaintiff) Verified Complaint (the complaint), admit the allegations on information and belief.
2. In response to Paragraph 2, admit.
3. In response to Paragraph 3, admit.
4. In response to Paragraph 4, admit that the Tailings Basin is the disposal area for the tailings generated during the processing of taconite at the Minntac facility, and this basin also

stores process water for use at the facility. Admit that the Tailings Basin discharges pollution and the facility holds National Pollution Discharge Elimination/State Disposal System (NPDES/SDS) permit MN0057207, but deny any implication that the facility is currently in compliance with state and federal Water Quality Standards (WQS) or that all seepages and discharges of pollution from the basin are permitted and/or regulated.

5. In response to Paragraph 5, admit that MN0057207 was issued in 1987 and expired in 1992. Defendant-Intervenors lack knowledge to admit or deny the date at which U.S. Steel applied for a renewal of the permit in the 1990s and therefore deny the remaining allegations.

6. In response to Paragraph 6, admit that U.S. Steel may request modifications to WQS and the classifications of bodies of waters downstream from the Tailings Basin from the Minnesota Pollution Control Agency (MPCA or “the agency”) under Minnesota law.

7. In response to Paragraph 7, U.S. Steel’s Use Attainability Analysis (UAA) petition speaks for itself. Defendant-Intervenors lack knowledge of the date of the application and the agency’s response and therefore deny the remaining allegations.

8. In response to Paragraph 8, U.S. Steel’s Request for Site-Specific Modification (SSS or “Site Specific Standard”) speaks for itself. Defendant-Intervenors lack knowledge of the date of the alleged application and the agency’s response and therefore deny the remaining allegations.

9. In response to Paragraph 9, first sentence, lack knowledge to admit or deny when U.S. Steel submitted applications to MPCA, and the rest of this sentence characterizes federal law and U.S. Steel’s legal argument for which no response is needed. In response to Paragraph 9, second sentence, this is a characterization of a federal law which speaks for itself. To the extent

that the allegations are inconsistent with federal law and regulations, deny. In response to Paragraph 9, third sentence, lack knowledge to admit or deny the allegation and therefore deny.

10. In response to Paragraph 10, affirmatively allege the following:

- a. That Minnesota Center for Environmental Advocacy (MCEA), Save our Sky Blue Waters (SOS), and Save Lake Superior Association (SLSA) filed suit against MPCA on November 9, 2016, alleging that MPCA failed to act on its obligations to timely reissue Minntac's NPDES/SDS permit to include standards that comply with all existing Clean Water Act (CWA) and Minnesota WQS, resulting in a permit that is inadequate to prevent pollution, impairment, or destruction, and is therefore in violation of the Minnesota Environmental Rights Act. Minn. Stat. §§ 116B.01–13.
- b. That MPCA issued a draft NPDES/SDS permit for the Minntac Tailings Basin for public comment on November 15, 2016.
- c. That on December 6, 2016, MCEA, SOS, and SLSA entered into a settlement agreement with MPCA pursuant to which the complaint was dismissed without prejudice, and MPCA agreed to “pursue issuance of a final [NPDES/SDS] permit governing surface water and groundwater pollution from the Minntac tailings basin with the goal of completing all administrative proceedings and issuing a final permit within nine months of the Effective Date of this stipulation.”

Defendant-Intervenors deny any other allegations or implications inconsistent with these allegations.

11. In response to Paragraph 11, lack knowledge to admit or deny the allegation as it is written because the phrase “announced that it intended to wait” is vague and ambiguous. The allegation appears to be referring to an agency statement that, if it exists, speaks for itself. To the extent that the allegation is inconsistent with MPCA’s statement, deny.

12. In response to Paragraph 12, the allegations characterize Plaintiff’s lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

13. In response to Paragraph 13, the allegations characterize Plaintiff’s lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

14. In response to Paragraph 14, the allegations characterize Plaintiff’s lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

15. In response to Paragraph 15, the allegations characterize Plaintiff’s lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

16. In response to Paragraph 16, the allegations characterize Plaintiff’s lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

17. In response to Paragraph 17, the allegations state legal conclusions to which no response is required. To the extent a response is required, deny.

18. In response to Paragraph 18, admit MPCA resides in Ramsey County, the remaining allegations state legal conclusions to which no response is required.

19. In response to Paragraph 19, admits on information and belief.

20. In response to Paragraph 20, admits that MPCA issued a NPDES/SDS permit pursuant to its authority and that the Environmental Protection Agency (EPA) oversees MPCA's NPDES program, and that the Tailings Basin discharges water pollution, but deny any implication that the facility is currently in compliance with state and federal WQS or that water quality impacts from the Basin are adequately "regulated."

21. In response to Paragraph 21, admit that U.S. Steel holds NPDES/SDS Permit MN00057207, and that the Tailings Basin discharges water pollution, but deny any implication that the permit "regulates and authorizes" all discharges or that the facility is currently in compliance with state and federal WQS.

22. In response to Paragraph 22, admit the first sentence on information and belief and admit that "The NPDES/SDS permit has been administratively continued . . . since it expired on July 31, 1992, and U. S. Steel continues to operate under the expired permit" but deny remaining allegations and inferences in the second sentence.

23. In response to Paragraph 23, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

24. In response to Paragraph 24, admit that "on or about November 15, 2016, MPCA issued for public comment a draft NPDES/SDS permit for the Minntac Tailings Basin facility" and deny all other allegations and characterizations.

25. In response to Paragraph 25, admit.

26. In response to Paragraph 26, the allegations characterize a stipulation agreement between MCEA, SOS, SLSA, and MPCA, which speaks for itself and therefore no response is required. To the extent a response is required, deny.

27. In response to Paragraph 27, lack knowledge to admit or deny the allegation because it seems to be summarizing an uncited announcement. The allegation appears to be referring to an agency statement that, if it exists, speaks for itself, and to the extent that the allegation is inconsistent with MPCA's statement, deny.

28. In response to Paragraph 28, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. Defendant-Intervenors lack knowledge to admit or deny MPCA's goals or plans. To the extent a response is required, deny.

29. In response to Paragraph 29, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny. Affirmatively allege that the CWA requires review and reissuance of NPDES permits which contain effluent limitations sufficient to prevent exceedances of existing WQS every five years regardless of the status of UAA, SSS, or triennial review proceedings.

30. In response to Paragraph 30, deny that the CWA was adopted in 1977, but admit the CWA was adopted in 1972 with the goal to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. § 1251). Deny the remaining allegations and characterizations in Paragraph 30.

31. In response to Paragraph 31, admit.

32. In response to Paragraph 32, admit that the MPCA has established WQS—both numeric and narrative—that are intended to protect specified uses in specified water bodies, as set forth in Minnesota Rules, Chapters 7050 and 7052.

33. In response to Paragraph 33, admit the allegations and affirmatively allege that such state-adopted WQS are only effective once approved by EPA.

34. In response to Paragraph 34, this is a characterization of a state regulation that speaks for itself. To the extent that those allegations are inconsistent with Minnesota Rules Chapter 7050 and other regulations, deny. Affirmatively allege that “general policies addressing implementation issues” are not WQS.

35. In response to Paragraph 35, admit.

36. In response to Paragraph 36, lack knowledge to admit or deny the allegations of the date of submission of the document, the document speaks for itself, and therefore deny the allegations and characterizations in Paragraph 36.

37. In response to Paragraph 37, admit that Upper Dark River and Timber Creek are located downstream from the Minntac facility insofar as this references the Tailings Basin, and admit that U.S. Steel requested their reclassification. In response to Paragraph 37, second sentence, the cited regulation speaks for itself and U.S. Steel’s compliance with this provision is a legal conclusion; to the extent that a response is required, deny.

38. In response to Paragraph 38, the cited regulation speaks for itself, to the extent that a response is required, deny.

39. In response to Paragraph 39, the cited regulation speaks for itself, to the extent that a response is required, deny.

40. In response to Paragraph 40, the cited regulation speaks for itself, to the extent that a response is required, deny.

41. In response to Paragraph 41, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

42. In response to Paragraph 42 and all subparts, the document speaks for itself and Defendant-Intervenors deny all allegations. Affirmatively allege that the validity of the UAA petition is not appropriately before this Court.

43. In response to Paragraph 43, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny. Affirmatively allege that the validity of the UAA petition is not appropriately before this Court.

44. In response to Paragraph 44 and all subparts, the document speaks for itself and Defendant-Intervenors deny all allegations. Affirmatively allege that the validity of the UAA petition is not appropriately before this Court.

45. In response to Paragraph 45, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny. Affirmatively allege that the validity of the UAA petition is not appropriately before this Court.

46. In response to Paragraph 46 and all subparts, the document speaks for itself. To the extent a response is required, deny. Affirmatively allege that the validity of the UAA petition is not appropriately before this Court.

47. In response to Paragraph 47, lack knowledge to admit or deny the factual allegations in Paragraph 47 and therefore deny all allegations.

48. In response to Paragraph 48, deny. Affirmatively allege that under 40 C.F.R. §§ 131.21(c)(1)&(2) the applicable WQS for permitting are those laid out in current regulations, petitioned-for standards are not applicable in permitting unless and until promulgated by the state and approved by EPA.

49. In response to Paragraph 49, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. Defendant-Intervenors lack knowledge to admit or deny what MPCA has done in response to an application and therefore, to the extent a response is required, deny.

50. In response to Paragraph 50, deny.

51. In response to Paragraph 51, deny.

52. In response to Paragraph 52, lack knowledge to admit or deny the allegations of the date of submission of the document, the document speaks for itself. To the extent a response is required, deny.

53. In response to Paragraph 53, the referenced document speaks for itself. To the extent a response is required, deny.

54. In response to Paragraph 54, the referenced regulation speaks for itself. To the extent a response is required, deny.

55. In response to Paragraph 55, the referenced regulation speaks for itself. To the extent a response is required, deny.

56. In response to Paragraph 56, the referenced regulation speaks for itself. To the extent a response is required, deny.

57. In response to Paragraph 57, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. Defendant-Intervenors lack knowledge

to admit or deny whether MPCA has responded to the application. To the extent a response is required, deny.

58. In response to Paragraph 58, deny.

59. In response to Paragraph 59, deny. Affirmatively allege that MPCA is bound by law to apply existing WQS in NPDES permitting.

60. In response to Paragraph 60, deny.

61. In response to Paragraph 61, deny.

62. In response to Paragraph 62, first sentence, admit to the extent that the MPCA is the state agency with the authorities provided in Minnesota Statutes Section 115.03, Subdivision 5, with regard to the participation by the state of Minnesota in the NPDES. Admit that the MPCA is charged with reviewing Minnesota's WQS and, as appropriate, modifying and adopting standards within the meaning of 33 U.S.C. § 1313, and deny all remaining allegations.

63. In response to Paragraph 63, the referenced regulation speaks for itself. To the extent a response is required, deny.

64. In response to Paragraph 64, admit that the MPCA conducted a review of the WQS beginning in 2008. Defendant-Intervenors lack knowledge to admit or deny the remaining allegations. To the extent a response is required, deny.

65. In response to Paragraph 65, admit only that the MPCA held public information sessions regarding Triennial Standards Review as a whole in November, 2010. Defendant-Intervenors lack knowledge to admit or deny the remaining allegations. To the extent a response is required, deny.

66. In response to Paragraph 66, first sentence, lack knowledge and therefore deny; second sentence, admit that the quoted document exists and speaks for itself.

67. In response to Paragraph 67, admit that the quoted website exists and speaks for itself.

68. In response to Paragraph 68, admit that the quoted website exists and speaks for itself.

69. In response to Paragraph 69, the allegations are attributed to a webpage that is not provided with any specificity and Defendant-Intervenors lack the knowledge to admit or deny the allegations and therefore deny.

70. In response to Paragraph 70, lack the knowledge to admit or deny the allegations and therefore deny.

71. In response to Paragraph 71, lack the knowledge to admit or deny the allegations and therefore deny.

72. In response to Paragraph 72, admit that the quoted website exists and speaks for itself.

73. In response to Paragraph 73, admit that the quoted website exists and speaks for itself.

74. In response to Paragraph 74, admit that comments were filed and deny any inferences.

75. In response to Paragraph 75, admit.

76. In response to Paragraph 76, deny.

77. In response to Paragraph 77, deny. Affirmatively allege that MPCA is bound by law to apply existing, EPA-approved WQS in NPDES permitting.

78. In response to Paragraph 78, deny.

79. In response to Paragraph 79, deny.

80. In response to Paragraph 80, admit and deny as otherwise qualified or stated above.

81. In response to Paragraph 81, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

82. In response to Paragraph 82, this is a characterization of a state regulation that speaks for itself. To the extent that those allegations are inconsistent with Minnesota Rule 7050.0405, deny. All other allegations and inferences are denied.

83. In response to Paragraph 83, deny.

84. In response to Paragraph 84, deny.

85. In response to Paragraph 85, admit and deny as otherwise qualified or stated above.

86. In response to Paragraph 86, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

87. In response to Paragraph 87, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. The cited regulation is a partial quotation of a regulation that speaks for itself and all characterizations and allegations inconsistent with the regulation are denied. To the extent a response is required, deny.

88. In response to Paragraph 88, deny.

89. In response to Paragraph 89, deny.

90. In response to Paragraph 90, admit and deny as otherwise qualified or stated above.

91. In response to Paragraph 91, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

92. In response to Paragraph 92, admit only to the extent that the MPCA is the state agency with the authorities provided in Minnesota Statutes Section 115.03, Subdivision 5, with regard to the participation by the State of Minnesota in the NPDES and that the MPCA is charged with reviewing Minnesota's WQS and, as appropriate, modifying and adopting standards within the meaning of 33 U.S.C. § 1313. The quoted CWA provision speaks for itself. To the extent a response is required, deny.

93. In response to Paragraph 93, lack knowledge to admit or deny the allegations in Paragraph 93 and therefore deny.

94. In response to Paragraph 94, lack knowledge to admit or deny allegations regarding what MPCA "determined" and therefore deny the allegation; the remaining allegation is a legal assertion for which no response is required. To the extent a response is required, deny.

95. In response to Paragraph 95, deny.

96. In response to Paragraph 96, admit and deny as otherwise qualified or stated above.

97. In response to Paragraph 97, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

98. In response to Paragraph 98, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. The cited regulation speaks for itself. To the extent a response is required, deny.

99. In response to Paragraph 99, lack knowledge to admit or deny the allegations in Paragraph 99 and therefore deny.

100. In response to Paragraph 100, deny.

101. In response to Paragraph 101, deny.

102. In response to Paragraph 102, admit and deny as otherwise qualified or stated above.

103. In response to Paragraph 103, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

104. In response to Paragraph 104, deny.

105. In response to Paragraph 105, deny.

106. In response to Paragraph 106, deny.

107. In response to Paragraph 107, admit and deny as otherwise qualified or stated above.

108. In response to Paragraph 108, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.

109. In response to Paragraph 109, admit only to the extent that the MPCA is the state agency with the authorities provided in Minnesota Statutes Section 115.03, Subdivision 5, with regard to the participation by the state of Minnesota in the NPDES and that the MPCA is charged with reviewing Minnesota's WQS and, as appropriate, modifying and adopting standards within the meaning of 33 U.S.C. § 1313. The quoted CWA provision speaks for itself, and to the extent that the allegations are inconsistent with federal law and regulations, deny.

110. In response to Paragraph 110, deny.
111. In response to Paragraph 111, deny.
112. In response to Paragraph 112, admit and deny as otherwise qualified or stated above.
113. In response to Paragraph 113, the allegations characterize Plaintiff's lawsuit and legal conclusions, and therefore no response is required. To the extent a response is required, deny.
114. In response to Paragraph 114, admit that "on or about November 15, 2016, MPCA initiated the permit reissuance process by issuing for public comment the Draft NPDES/SDS Permit for the Minntac Tailings Basin that includes limitations and requirements based on water quality standards." Deny all other allegations and inferences.
115. In response to Paragraph 115, deny.
116. In response to Paragraph 116, deny.
117. In response to Paragraph 117, admit and deny as otherwise qualified or stated above.
118. In response to Paragraph 118, deny.
119. In response to Paragraph 119, deny.
120. In response to the relief requested in Paragraphs 1–9, deny that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

1. The complaint fails to state a claim upon which relief can be granted.
2. U.S. Steel's claims are barred by the doctrine of "unclean hands."
3. U.S. Steel's damages, if any, were caused by its own conduct.

4. U.S. Steel's claims are barred by its failure to mitigate its purported damages.
5. U.S. Steel's claims are barred because it has a remedy at law.
6. U.S. Steel's claims are barred because it has failed to exhaust its administrative remedies.
7. U.S. Steel's claims are barred by waiver.
8. U.S. Steel's claims are barred by laches.
9. The relief requested exceeds the jurisdiction of the Court.
10. The relief requested is contrary to federal and Minnesota law.
11. U.S. Steel's claims are contrary to public policy.

AVERMENTS

Defendant-Intervenors aver as follows:

1. U.S. Steel's lawsuit is intended to delay the issuance of a final NPDES permit for the Minntac Tailings Basin.
2. Defendant-Intervenors negotiated a stipulated settlement with MPCA to issue a final NPDES permit for the Minntac Tailings Basin facility within nine months of that settlement.
3. The issuance of a final NPDES permit for Minntac's Tailings Basin protects and advances Defendant-Intervenors' interests in protecting Minnesota's water resources from pollution, impairment, or destruction. Defendant-Intervenors' members are directly impacted by water pollution emitted from the Minntac Tailings Basin, both to their drinking water and their enjoyment of natural resources in Northern Minnesota. Defendant-Intervenors have long worked on mining issues—including agency permitting—in Minnesota, and would have to expend additional resources to regain their legal rights under the settlement if U.S. Steel is successful in

delaying reissuance of this nearly thirty year old permit. Granting U.S. Steel any relief in this lawsuit would harm these interests.

4. Members of the Defendant-Intervenors include individuals who derive recreational and aesthetic enjoyment, or scientific and professional value, from clean water in the watersheds impacted by Minntac's Tailings Basin polluted discharges. Any court-imposed delay on the issuance of a new NPDES permit for this facility would harm those recreational, aesthetic, scientific, and professional interests.

RELIEF

WHEREFORE, Defendant-Intervenors respectfully request that this Court:

- a. Dismiss U.S. Steel's Complaint with prejudice;
- b. Deny Plaintiff's requests for a writ of mandamus, declaratory judgment, injunctive relief, costs and fees, and any other relief sought; and
- c. Grant such other and further relief that this Court deems just and equitable.

Dated: April 5, 2017

Respectfully submitted,

/s/ Hudson Kingston
Hudson B. Kingston (#0397994)
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ACKNOWLEDGEMENT

Defendant-Intervenors, by their attorney, Hudson Kingston, acknowledges that sanctions may be awarded under Minn. Stat. § 549.211 to the opposing party if the Court determines the party or its attorney acts in bad faith, asserts a frivolous claim, asserts an unfounded position to delay or harass, or commits a fraud upon the Court.

/s/ Hudson Kingston
Hudson B. Kingston (#0397994)